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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-205127

DATE: April 2, 1982

MATTER OF: DeRalco, Incorporated

DIGEST:

1. Bid which appeared to exceed item statutory cost limitation stated in solicitation is not nonresponsive where the existence of a mistake was evident from a discrepancy on the face of the bid, and the actual bid price for the item, which was within the cost limitation, was also apparent.
2. Agency determination to allow correction of bid mistake has reasonable basis where discrepancy on face of bid clearly evidences existence of mistake, and bid, viewed in conjunction with bidder's worksheets, provides clear and convincing evidence of mistaken attribution from one item to another, causing bid discrepancy, and of omission of intended bid price of one of seven buildings in calculating total price.

DeRalco, Incorporated (DeRalco), protests the Air Force's determination to permit Hatfield Heating and Air Conditioning, Incorporated (Hatfield), to correct a mistake in bid alleged after the opening of bids under invitation for bids (IFB) No. F38601-81-B0049 issued for the alteration and repair of certain aircraft facilities at Shaw Air Force Base, and the proposed award to Hatfield under the IFB.

Based on the following, we deny the protest.

The IFB price schedule consisted of two items; item 0001 was for repairs to seven buildings, item 0002 was for minor construction/alterations to two of the seven buildings listed under item 0001. One award was to be made for both items. The IFB stated that item 0002 was subject to a statutory cost limitation of \$100,000. In addition to the price schedule consisting of total prices for each item, the IFB required a separate breakdown

schedule of prices, by building and category, for the work specified under item 0002.

Hatfield submitted the low bid of \$322,000; DeRalco submitted the next low bid of \$403,233. In evaluating Hatfield's bid, the agency found that there was a discrepancy between the item 0002 price of \$100,211 indicated by Hatfield on the price schedule and the total price of \$68,467 indicated on the breakdown schedule for item 0002. The contracting officer notified Hatfield of the discrepancy and requested Hatfield to verify the bid. Hatfield advised the contracting officer that a mistake had been made and provided documentation to support the existence of the mistake and of its intended bid of \$374,711. The Air Force determined under Defense Acquisition Regulation (DAR) § 2-406.3 (1976 ed.) that Hatfield had provided clear and convincing evidence of the existence of the mistake and of its intended bid and proposed to award Hatfield the contract.

DeRalco protested to our Office, asserting that, since the IFB clearly stated that there was a statutory cost limitation of \$100,000 for item 0002, Hatfield's indicated price of \$100,211 for this item rendered its bid nonresponsive and, therefore, ineligible for correction or award. DeRalco also argued that Hatfield had not supplied clear and convincing evidence of a mistake or of its intended bid and, thus, correction was impermissible. In addition, DeRalco objects that the Air Force has declined to provide it with a copy of Hatfield's worksheets.

It is our practice to honor agency-imposed restrictions on documents; the decision whether or not to release them to the protester is a matter for the contracting activity, not GAO, to decide. We will consider a bid protest against a bid correction even though the protester has not been provided the worksheets upon which the agency's determination to permit correction was based. Kings Point Mfg. Co., Inc., B-193592, September 14, 1979, 79-2 CPD 196.

The Air Force contends that the \$100,000 statutory limitation, 10 U.S.C. § 2674(e) (Supp. III, 1979), in the IFB was not mandatory and could have been waived with the result that the Hatfield bid would not be nonresponsive. However, in view of the following, we need not consider the waiver issue.

The price schedule page of the solicitation included the following statement:

"The following items are classified as 'minor construction' and in total make up the work required under item 0002 above. The total cost of item 0002 shall not exceed the statutory cost limitation of \$100,000. In order to assure that this limit is not exceeded the contractor is required to fill in the schedule below. A bid which does not contain bid prices for the items identified below may be considered nonresponsive. See paragraph 31 of the Continuation to SF 22, page 18."

This was followed by the price breakdown page. That page invited prices for each of 12 different items for one building and for each of eight different items for another building. The page also provided for a separate total for the item prices for each building and for a total based upon the two individual totals.

Paragraph 31 of the solicitation reads as follows:

"A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Installation and Logistics) prior to award."

In view of these instructions and the specific layout of the price breakdown page, the bid price of \$68,467 for item 0002 stated on the breakdown sheet of Hatfield's bid was clearly the controlling price and it was apparent from the face of the bid. Apparently, there was a transposition error in carrying the \$68,467 amount forward as \$100,211 on the prior page of the bid, but the lower figure constituted the specifically stated and carefully delineated bid price.

In Marine Power & Equipment Co., Inc., B-200692,
February 19, 1981, 81-1 CPD 113, a solicitation requiring

bids for various alternatives contained a statement that bids with different unit prices for partial quantities would be rejected as nonresponsive. The low bidder submitted a bid with an obvious price discrepancy, including a proscribed unit price differential, under one of the alternatives. The agency authorized correction because it concluded that from the face of the bid, it was obvious that there had been a mistake and the intended bid was also apparent. We held that since the face of the bid contained a discrepancy, but the intended bid was apparent, the bid price was not ambiguous and nonresponsive and the bid could be accepted. We also stated that the failure to list uniform item prices, as expressly required, did not require a finding of nonresponsiveness since the intended uniform bid was clear. The same considerations obtain in this case. See also Patterson Pump Company et al., B-200165, B-200165.2, December 31, 1980, 80-2 CPD 453; Value Precision, Inc., B-191563, August 7, 1978, 78-2 CPD 97. Accordingly, we find that Hatfield's bid was not nonresponsive on its face.

In response to the contracting officer's request for bid verification, Hatfield indicated that the \$68,467 price shown on the itemized breakdown for item 0002 was the correct intended price, and that the discrepancy of approximately \$32,000 consisted of work which should have been included under item 0001, but which had been omitted from item 0001 and included under item 0002. Hatfield also claimed that its bid for item 0001 contained an additional mistake of \$52,711, consisting of all of the work on one building (712) which had been calculated, but accidentally omitted in figuring the total bid.

Based on this explanation, along with the relevant worksheets, the contracting officer concluded that Hatfield should be permitted to correct its bid and should be awarded the contract for \$374,711 since, as required under DAR § 2-406.3(a)(2), Hatfield had provided clear and convincing evidence that a mistake had been made and that the amount of its actually intended bid was \$374,711, which remained the low bid.

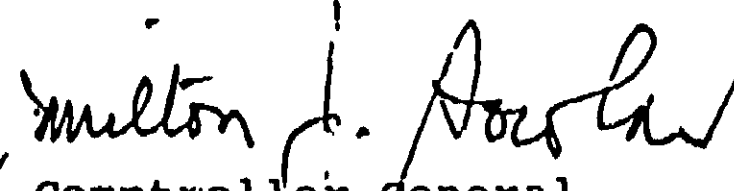
While our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award has been delegated to the

procuring agency. The weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the procuring agency whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294, 53 Comp. Gen. 232, 235 (1973). Here, we find no basis to question the agency determination to allow correction.

Clear and convincing evidence of the existence of a mistake was apparent from the discrepancy on the face of the bid between the \$100,211 shown on the price schedule as the item 0002 total and the breakdown schedule total price of \$68,467 for the same item shown on the next page of the bid.

We have examined copies of the worksheets submitted to the Air Force by Hatfield. The adding tape run for the bid calculation is made up of six subtotals and shows a grand total of \$321,644 with a notation to round up to a total bid of \$322,000. The worksheets for the individual building projects evidence the fact that the tape run includes the estimates for all of the buildings except building 712 for which the worksheet shows a bid price calculation of \$52,711. Apparently, this price was omitted from the tape run used to prepare the bid total. Thus, the intended bid of \$374,711 was established on the basis of \$322,000 for the six buildings, plus \$52,711 for the omitted building.

With respect to the shifting of \$31,744 from item 0001 to item 0002, the worksheets show that Hatfield misallocated that amount to the item 0002 price to arrive at the total of \$100,211 when the \$31,744 should have been allocated to item 0001. Therefore, we conclude that the Army had a reasonable basis for its determination from the bid and the worksheets.

for 
Comptroller General
of the United States